

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 08-2655

United States of America,

Appellee,

v.

Angel Perez-Abarca,

Appellant.

*

*

*

*

*

*

*

*

*

Appeal from the United States
District Court for the Northern
District of Iowa.

[UNPUBLISHED]

Submitted: October 14, 2009

Filed: November 5, 2009

Before MURPHY, COLLOTON, and SHEPHERD, Circuit Judges.

PER CURIAM.

Angel Perez-Abarca appeals from the 120-month prison sentence the district court¹ imposed after he pleaded guilty to conspiring to distribute 500 grams or more of a substance containing methamphetamine, and 50 grams or more of actual methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846. Counsel has moved to withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967), raising as a potential issue that the sentence was unduly harsh.

¹The Honorable Mark W. Bennett, United States District Judge for the Northern District of Iowa.

Abarca has filed a pro se supplemental brief suggesting that his counsel was ineffective.

Reviewing the sentence for abuse of discretion, we must first ensure that there were no significant procedural errors, and then consider the substantive reasonableness of the sentence. See United States v. Feemster, 572 F.3d 455, 461 (8th Cir. 2009) (en banc). We conclude that the district court committed no procedural error. We further conclude that the sentence is not unreasonable, because 120 months was the statutory minimum and Abarca did not demonstrate that he was eligible for safety-valve relief. See United States v. Gregg, 451 F.3d 930, 937 (8th Cir. 2006) (district court's lack of discretion to impose non-Guidelines sentence below statutory minimum); United States v. Warford, 439 F.3d 836, 844 (8th Cir. 2006) (defendant's burden of showing eligibility for safety-valve relief). Further, Abarca must pursue his ineffective-assistance claims in a proceeding under 28 U.S.C. § 2255. See United States v. Lewis, 483 F.3d 871, 873 n.2 (8th Cir. 2007).

Having reviewed the record independently under Penon v. Ohio, 488 U.S. 75, 80 (1988), we have found no non-frivolous issue for appeal. Accordingly, we affirm the district court's judgment, and we grant counsel's motion to withdraw, subject to counsel informing appellant about procedures for seeking rehearing and filing a petition for certiorari.